

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 09, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

LARAMIE PLEASANT, a single person,

Plaintiff,

v.

WASHINGTON STATE,
WASHINGTON STATE PATROL,
CHIEF JOHN R. BATISTE,
individually and in his official capacity,
TROOPER MICHAEL L.
CHRISTENSEN, individually and in
his official capacity, TROOPER KARL
A. FENSTER, individually and in his
official capacity, TROOPER AARON
A. NORTON, individually and in his
official capacity, TROOPER
CHARLES ROB GARDINER,
individually and in his official capacity,
TROOPER JENNIFER D. BARRETT,
individually and in his official capacity,
LAMARR B. CRAIG, a single person,
and PROBATION OFFICER FISK,
individually and in his official capacity,

Defendants.

No. 2:23-CV-00246-MKD

ORDER DIRECTING
SUPPLEMENTAL BRIEFING AND
GRANTING MOTION TO DISMISS
AS TO DEFENDANT JENNIFER D.
BARRETT

ECF No. 45

1 Before the Court is a Motion for Summary Judgment filed on behalf of all
2 Defendants, except Defendant Lamarr B. Craig (hereinafter “the State
3 Defendants”). ECF No. 22. On August 6, 2024, the Court held a hearing on the
4 motion. ECF No. 38. Douglas Phelps appeared on behalf of Plaintiff Laramie
5 Pleasant, and Tyler D. Lloyd and Michael Stapleton¹ appeared on behalf of the
6 State Defendants.

7 On review of the motion and the docket, there are outstanding legal issues
8 requiring additional briefing, as set forth below.

9 **A. Sovereign Immunity and the Eleventh Amendment**

10 Plaintiff pursues federal and state law causes of action against a state, a state
11 police force, state police officers, and a state probation officer in their official and
12 individual capacities. ECF No. 1 at 1. The State Defendants move for summary
13 judgment on the state law claims on Eleventh Amendment grounds. ECF No. 22 at
14 19. Their Eleventh Amendment arguments do not differentiate between the
15 different categories of State Defendants named in this suit (a state, a state police
16 force, and state officers), nor do they differentiate between the claims against the

17
18 ¹ Mr. Stapleton appeared as a licensed legal intern under Washington Supreme
19 Court Admission and Practice Rule 9, supervised by Mr. Lloyd. On August 7,
20 2024, Mr. Stapleton filed a Notice of Association with Mr. Lloyd. ECF No. 40.

1 officer Defendants in their official capacities and the claims against the officer
2 Defendants in their individual capacities. *See id.*

3 “The Eleventh Amendment grants a State immunity from suit in federal
4 court . . . by its own citizens” *Walden v. Nevada*, 945 F.3d 1088, 1092 (9th
5 Cir. 2019) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)). This immunity extends
6 to claims brought against state agencies in federal court. *City of San Juan*
7 *Capistrano v. Cal. Pub. Utils. Comm’n*, 937 F.3d 1278, 1281 (9th Cir. 2019)
8 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 97-100 (1984)).
9 “State officials sued in their official capacities are generally entitled to Eleventh
10 Amendment immunity.” *Lund v. Cowan*, 5 F.4th 964, 969 (9th Cir. 2021) (citing
11 *Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007)). This is because “a suit
12 against a state official in his or her official capacity is not a suit against the official
13 but rather is a suit against the official’s office. . . . As such, it is no different from a
14 suit against the State itself.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71
15 (1989) (citations omitted).

16 The Court directs the parties to brief whether (1) Plaintiff’s claims—under
17 federal and state law—against the State, State Patrol, and state officials in either
18 their individual capacities are cognizable in light of the Eleventh Amendment;
19 (2) if the Eleventh Amendment precludes certain claims, which claims, if any,
20

1 survive; and (3) what relief sought by Plaintiff is recoverable as to each State
2 Defendant, consistent with the Eleventh Amendment.

3 **B. Fed. R. Civ. P. 12(b)(6)**

4 “[A] trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P.
5 12(b)(6).” *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 335 (9th Cir.
6 2015) (quoting *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987))
7 (quotation marks and alteration omitted). “[T]he district court must give notice of
8 its *sua sponte* intention to dismiss and provide the plaintiff with ‘an opportunity to
9 at least submit a written memorandum in opposition to such motion.’” *Id.* (quoting
10 *Wong v. Bell*, 642 F.2d 359, 362 (9th Cir. 1981)).

11 Defendants Craig and “Probation Officer Fisk” are named in the Complaint
12 and have been served. ECF No. 1 at 2-3 ¶ 1.6; ECF Nos. 10-11. Counsel for the
13 other State Defendants has also appeared on behalf of Defendant Officer Fisk.
14 ECF Nos. 3, 35. Defendant Craig has not responded or appeared to date. It is
15 exceedingly difficult to comprehend any possible claim that the facts alleged in the
16 Complaint state against Defendants Craig and Officer Fisk. *See* ECF No. 1. In
17 fact, the Complaint lists Defendant Craig in the caption and states that he was
18 driving the vehicle, but the Complaint fails to name Defendants Craig and Officer
19 Fisk in any of Plaintiff’s causes of action. *See id.* at 7-13. Plaintiff has now
20 moved for entry of default as to Defendant Craig, despite the fact he is not named

1 in any specific cause of action. ECF No. 44. The Court continues to hold that
2 motion in abeyance pending the further briefing ordered below. *See* ECF No. 46.

3 Plaintiff is hereby given notice of the Court's intent to dismiss any claims
4 against Defendants Craig and Officer Fisk *sua sponte*. Consistent with the below
5 schedule, Plaintiff shall file briefing explaining the bases of these claims.

6 **C. Motion to Dismiss Defendant Barrett, ECF No. 45**

7 On August 14, 2024, Plaintiff filed a motion to dismiss Defendant Jennifer
8 Barrett without prejudice due to the failure to locate and serve her. ECF No. 45.
9 The Court held the motion in abeyance. ECF No. 46. Pursuant to Fed. R. Civ. P.
10 41(a)(1)(A)(i), a plaintiff may voluntarily dismiss an action without a court order
11 prior to the opposing party filing an answer or summary judgment. Defendant
12 Barrett has not been served and has not filed an answer or motion for summary
13 judgment. The Court grants Plaintiff's motion, ECF No. 45 and dismisses the
14 action against Defendant Jennifer Barrett without prejudice.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. The State Defendants' Motion and Memorandum for Summary
17 Judgment, **ECF No. 22**, is **HELD IN ABEYANCE**.

18 2. Plaintiff's Motion to Dismiss, **ECF No. 45**, is **GRANTED**. The
19 action against Defendant Jennifer Barrett is **DISMISSED** without prejudice.

3. **By September 23, 2024**, Plaintiff shall file a brief explaining why the claims against Defendants Craig and Officer Fisk should not be dismissed for failure to state a claim.

4. **By September 23, 2024**, Plaintiff and the State Defendants shall each file a supplemental brief, **not to exceed ten pages**, on the issues identified related to the Eleventh Amendment.

5. By September 30, 2024, Plaintiff and the State Defendants may each file a responsive brief, **not to exceed eight pages**, responding to each other's positions in the supplemental briefing related to the Eleventh Amendment.

IT IS SO ORDERED. The District Court Executive is directed to file this order and provide copies to counsel.

DATED September 9, 2024.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE